

Appeal from a decision of the Ridgecrest Resource Area, Bureau of Land Management, rejecting mining plan of operations CA MC-58758A in part.

Affirmed as modified in part; set aside in part and remanded.

1. Federal Land Policy and Management Act of 1976: Wilderness--Mining Claims: Plan of Operations--Mining Claims: Abandonment--Mining Claims: Relocation--Mining Claims: Recordation

A mining claim located in a wilderness study area after Oct. 21, 1976, is subject to provision of 43 U.S.C. | 1782(c) (1982) requiring that the land be managed to prevent impairment of the area for wilderness preservation. Where a mining claim located prior to Oct. 21, 1976, becomes abandoned and void for failure to comply with the recordation provisions of 43 U.S.C. | 1744 (1982), a mining claim located in 1979 covering the same area as the void claim is subject to the nonimpairment standard imposed upon claims located in wilderness study areas after Oct. 21, 1976, by 43 U.S.C. | 1782(c) (1982).

2. Federal Land Policy and Management Act of 1976: Wilderness--Mining Claims: Plan of Operations--Wilderness Act

BLM may properly reject a proposal in a mining plan of operations to construct a road within a wilderness study area when the record supports the conclusion that the road would impair the suitability of the area for preservation as wilderness, contrary to provision of 43 U.S.C. | 1782(c) (1982).

APPEARANCES: Ralph E. Pray, pro se.

#### OPINION BY ADMINISTRATIVE JUDGE ARNESS

Ralph E. Pray appeals from that part of a May 30, 1986, decision of the Ridgecrest Resource Area, California, Bureau of Land Management (BLM), rejecting his proposal in a mining plan of operations to build a 275-foot road and vehicle turn-a-round near the Gold Spur, lode mining claim CA MC-58758. The mine is in Coyote Canyon, situated in secs. 4 and 5, T. 24 S., R. 45 E., Mount Diablo Meridian, California. The proposed road would begin at the base of the Coyote Canyon wash and terminate on the hillside above the wash.

On January 27, 1986, Pray submitted a notice of intent to conduct mining operations at the Coyote Canyon minesite. On February 26, 1986, BLM rejected Pray's proposal subject to a right to appeal. BLM required that Pray submit instead a mining plan of operations because the area identified is located within the Manly Peak wilderness study area (WSA) CDCA-137. BLM, citing 43 CFR 3802.1-1, governing mining operations on lands within a WSA, required the submission and approval of a plan of operations by Pray prior to commencing any mining activity at the mine. BLM explained that because the mining claim, which was located October 28, 1979, was in a WSA subsequent to October 21, 1976, the claim must meet the criterion set out in Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. | 1782(c) (1982), that mining activity must not impair the area's suitability for preservation as wilderness.

Rather than filing an appeal, on March 4, 1986, Pray requested that BLM reconsider its decision and that it consider his prior request to be a mining plan of operations. He explained, concerning construction of the 275-foot roadway, that "[t]he trivial amount of roadwork I plan at the Gold Spur is not absolutely necessary, but it is highly desirable, for both practical and humanitarian reasons."

On March 13, 1986, BLM and Pray conducted a joint field examination of the mine area. In a letter dated March 14, 1986, Pray asked BLM whether his Gold Spur mining claim was a valid existing right within the Interior Management Policy and Guidelines for Lands under Wilderness Review (IMP), 44 FR 72014, 72023 (Dec. 12, 1979). On March 26, 1986, BLM replied that because the claim was located on October 28, 1979, the wilderness nonimpairment criteria set by the IMP were applicable to the claim. The Acting District Manager explained that:

In order to claim mining rights to allow impairment of wilderness suitability, you must have valid existing rights; a location based on a valid discovery as of that date, occurring before the date of the passage of the FLPMA (October 21, 1976). The location date of record for the Gold Spur lode mining claim is three years after passage of the FLPMA. Whether you had a discovery on October 28, 1979 (date of location) or after that date, as the record now reflects you could not have perfected the Gold Spur claim prior to October 28, 1979. Therefore the nonimpairment criteria in the IMP would apply to your operations. [Emphasis in original.]

Following submission by Pray of a plan for road construction at the Gold Spur Mine, BLM prepared an environmental assessment (EA) of the mining plan of operations and a Wilderness Nonimpairment/Impairment Statement (Impairment Statement) dated April 15, 1986, which provides the foundation for an EA Decision Record/Finding of No Significant Impacts (FONSI), made on May 30, 1986. The FONSI set out alternative courses of action for dealing

with Pray's mining plan of operations. Deciding to allow most of the mining activity proposed, BLM concluded that the construction of the proposed new access road over 275 feet of existing trail in Coyote Canyon could not be allowed, because the WSA would be impaired by the road (FONSI at 2, 3).

BLM then issued the May 30, 1986, decision which approved the proposed mining plan of operations except for the proposal to excavate and construct a 275-foot four-wheel-drive road and vehicle turn-a-round. BLM concluded that the proposed road construction constituted unnecessary and undue degradation within the prohibition of 43 CFR 3802.0-5(1). Id. at 1.

In his statement of reasons for appeal, Pray argues that the construction of the road is necessary for development of a working mine. He states, "A trail to site 'A' would not be satisfactory, safe, or acceptable for the transport of mine rail, mine timbers, dynamite, machinery and equipment to the mine, and would be impossible as a means of moving ore to a truck loading facility." Pray never discusses BLM's finding that his proposed construction would constitute unnecessary and undue degradation of the WSA.

The standard for managing a WSA during wilderness review is set by 43 U.S.C. | 1782(c) (1982). BLM is required to manage land in a WSA so as to not impair the suitability of the area for preservation as wilderness. 43 U.S.C. | 1782(c) (1982); 43 CFR 3802.0-6; Eugene Mueller, 103 IBLA 308 (1988); L.C. Artman, 98 IBLA 164, 167 (1987); John Loskot, 71 IBLA 165, 167 (1983); Dale F. Gimblett, 60 IBLA 341, 345 (1981). There is, however, an exception to this standard for mining and grazing use already existing on October 21, 1976. Section 603(c) provides that such mining and grazing use may continue

in the manner and degree in which the same was being conducted on October 21, 1976: Provided, that in managing the public lands the Secretary shall by regulation or otherwise take any action required to prevent unnecessary or undue degradation of the lands and their resources or to afford environmental protection.

43 U.S.C. | 1782(c) (1982). Section 701(h) of FLPMA also provides that all actions of the Secretary under the Act shall be subject to "valid existing rights," a term which we found in John Loskot, supra, encompasses claims in existence prior to enactment of FLPMA.

We first address Pray's inquiry whether his mining activities fall within the exception to the nonimpairment standard, the "unnecessary or undue degradation" exception accorded to mining claims existing prior to 1976. According to Pray, he located the Gold Spur lode mining claim in 1973, and filed the notice of location on January 21, 1974. He states he recorded the notices of assessment work every year until September 1977 when he "lost the entire mine road" (Letter dated Mar. 14, 1986, Pray to Hillier). He states he relocated the identical claim on October 28, 1979, and "kept it

up since, in all respects, both State and Federal." He states he has all the original recorded documents. Finally, he states "[a] valid discovery existed in 1976, under the most stringent validity requirements of quantity, quality and value." Id. Pray therefore admits he did not file evidence of assessment work performed or a notice of intention to hold the mining claim in 1978.

[1, 2] Pursuant to the recordation requirements of section 314 of FLPMA, 43 U.S.C. | 1744 (1982), and 43 CFR 3833.2-1, the owner of an unpatented mining claim located on public land is required to file evidence of assessment work performed or a notice of intention to hold the mining claim with the proper BLM office prior to December 31 of each year. Failure to file one of the required instruments within the time prescribed conclusively constitutes an abandonment of the mining claim. 43 U.S.C. | 1744(c) (1982); 43 CFR 3833.4.

A claim for which timely filings are not made is extinguished by operation of law regardless of the claimant's intent to hold the claim. United States v. Locke, 471 U.S. 84 (1985). The fact that assessment work was done or that timely filings have been made in other years has no effect on the conclusive presumption of abandonment embodied in the statute: a claim becomes abandoned when an annual filing is not timely received. Ptarmigan Co., 91 IBLA 113, 118 (1986). Since Pray admits he did not file the required affidavit of assessment for the Gold Spur claim in 1978, the 1973 location became abandoned and void.

Once a claim is abandoned and void, there can be no subsequent amendments of the claim, and no rights can be claimed on account of the void claim. R. Gail Tibbetts, 43 IBLA 210, 86 I.D. 538 (1979), overruled in part on other grounds, Hugh B. Fate, Jr., 86 IBLA 215 (1985). While an amended location of a claim generally relates back to the date of the original location, a mining claimant may not file an amended location of a void claim. Id. at 218, 86 I.D. at 542. Therefore, CA MC-58758 must be considered a claim located in 1979, and subject to the nonimpairment standard of section 603(c). See Eugene Mueller, 103 IBLA at 310-11.

We find that it was error to apply the statutory exception evaluating the road work against the unnecessary and undue degradation criterion reserved for claims in existence prior to FLPMA. Because this claim was located after the effective date of FLPMA, Oct. 21, 1976, the standard to be applied is the standard set by section 1782(c), requiring that land in a WSA must be managed so as not to impair the suitability of the land for wilderness. John Loskot, supra.

Applying this standard, we must conclude that construction of a road within a WSA constitutes an impairment of the suitability of the area for wilderness preservation. The record supports a finding that the proposed road construction under the plan of operations would impair the wilderness

characteristics of land within the WSA and that restoration of the land could not be timely accomplished in conformity to requirements of law. Pray has offered no evidence to challenge this finding on appeal.

In the absence of any such evidence in the record, we must conclude that BLM properly rejected that part of Pray's proposed mining plan of operations relating to the 275-foot road pursuant to provision of section 1782(c) (1982) and 43 CFR 3802.0-6, although it wrongly applied the "unnecessary and undue degradation" exception when making that determination. L.C. Artman, supra.

This does not complete our review in this appeal, however, since our disposition of Pray's appeal raises a question about the remainder of BLM's action concerning Pray's mining plan of operations, which entailed other work inside the WSA. As the FONSI described the work proposed by Pray, it involved

(1) improving (with mechanized equipment roughly three and one half miles of existing road with The Coyote Canyon drainage channel; (2) constructing 260 feet of new access road within this same channel; (3) constructing approximately 275 feet of (eight foot wide) new access road outside of the channel and up the south canyon wall; (4) repairing roughly one-half mile of existing foot trail (with hand tools) from the new road (3) to mine site; (5) repairing the existing mine facilities and structure; and (6) removing and transporting ore to the existing Hostage Well minesite for temporary storage. Of these, only the lower one and one half miles of item number (1) and storage site of item number (6) are outside of the WSA boundaries. All other aspects of the proposed action are within WSA No. CDCA-137.

(FONSI at 1).

Since BLM approved all the proposed construction, except for item number (3) described by the FONSI, using the unnecessary and undue degradation exception, rather than the nonimpairment standard, to judge the proposed work, it is apparent that the decision must again be reviewed to determine whether any of the proposed work, which was approved, can be allowed in the WSA using the appropriate standard. While Pray has not specifically raised this question by his appeal, he has placed the entire matter before us for review by questioning the correctness of the road construction within the WSA which was but a part of the work he proposed. The Board exercises the review authority of the Secretary in cases before it upon review, and we can, under our de novo review authority, review the entirety of any decision before us upon appeal. 43 CFR 4.1. We do so in this case, and direct that BLM review that part of Pray's mining plan of operations which was previously approved using the correct standard for review in such cases as this.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed in part as modified and set aside in part and remanded to BLM for review of that part of the entire mining plan of operations proposed by Pray which was previously approved using the nonimpairment standard to evaluate the proposed actions.

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Franklin D. Arness  
Administrative Judge

I concur:

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Bruce R. Harris  
Administrative Judge